

GEORGE N. BUTT, SURVIVOR OF BUTT & BLACK.

FEBRUARY 11, 1860.—Reported from the Court of Claims, committed to a Committee of the Whole House, and ordered to be printed.

The COURT OF CLAIMS submitted the following

REPORT.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The Court of Claims respectfully presents the following documents as the report in the case of

GEORGE N. BUTT, SURVIVOR OF BUTT & BLACK, *vs.* THE UNITED STATES.

1. The petition of the claimant.
- 2 Original documentary evidence in the case transmitted to the House of Representatives.
3. Claimant's brief.
4. United States solicitor's brief.
5. Opinion of the court adverse.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Washington, this fifth day of December,
[L. s.] A. D. 1859.

SAMUEL H. HUNTINGTON,
Chief Clerk Court of Claims.

UNITED STATES COURT OF CLAIMS.

Petition.

GEORGE N. BUTT, surviving partner of Black & Butt, *vs.* THE UNITED STATES.

To the honorable the judges of the Court of Claims:

Your petitioner, George N. Butt, surviving partner of the late firm of Black & Butt, a resident of Grayson county, State of Texas, respectfully represents: That on the seventh day of June, A. D. eighteen hundred and fifty-one, the said firm entered into a contract with Captain Alexander Montgomery, assistant quartermaster of the United

States army, to transport from Preston, Texas, to the post about to be established on the Brazos river, Texas, (assumed distance 158 miles,) such army stores and army baggage as the assistant quartermaster at Preston might require them to transport to said post on the Brazos; that they would deliver the said stores and baggage to the assistant quartermaster at the aforesaid post on the Brazos in the like order and condition as when received from the said assistant quartermaster at Preston, without unavoidable delay, unavoidable losses and damages only excepted; that they would provide good well-covered wagons and serviceable teams, with competent drivers, for this service, and that they would transport said stores as above stated whenever so required to do except between the first days of December and the fifteenth day of March in each year that the said contract should remain in force; and the said Captain Montgomery, on behalf of the United States, promised and agreed to pay to your petitioners three dollars for each and every hundred weight of army stores and army baggage which they should transport as above stated, and pro rata for the transportation of said stores and baggage to any point or points west of the Brazos river; and the said Captain Montgomery, assistant quartermaster, promised and agreed to cause sufficient military protection to be afforded to the teams employed as aforesaid, provided said teams were to be made to move in such order as the officers in command of escorts should direct, and that the said contract should remain in force for one year from the date thereof, or longer, as might be determined by the said Captain Montgomery, assistant quartermaster, or his successors. Your petitioners would further show that for the faithful performance of their contract they entered into a bond with approved securities in the penal sum of fifty-two thousand dollars, and that to enable petitioners to comply promptly with the terms of their said contract they purchased and employed a large train of wagons and teams, to wit: sixty-eight large road wagons, drawn by about two hundred and seventy-two yoke of oxen, and hired the necessary number of teamsters and laborers to attend to and manage the same, and that your petitioners faithfully transported all the military stores and baggage, and performed all the services required of them by their contract during the year 1851. Petitioners further represent that never doubting the continuance of their said contract for the full period of at least one year, they were at considerable trouble and expense in the care of such teams and wagons as they had purchased and kept on hand through the winter, to enable them to resume promptly on the 15th day of March, 1852, the execution of their said contract, and that on the said 15th of March, 1852, or thereabouts, they reported themselves to Captain G. F. Wood, assistant quartermaster of the United States army, at Preston, the successor of said Captain Montgomery, as ready to resume the transportation required of them by their contract, when your petitioners were verbally informed that their contract was at an end, and abrogated by the United States, without alleged fault on the part of your petitioners, and to their great damage.

Your petitioner further represents that about the time of the abrogation of their said contract by the United States, another contract was entered into by the government of the United States with one T. G. Wright, of Red River county, Texas, for the transportation of army stores, &c., from Wright's Landing, on Red river, to Preston, instead of employing the teams of your petitioners in this service, to their very great loss and injury.

They allege that they had faithfully and promptly performed all the service required of them by their contract during the hauling season of 1851, and they allege that in consequence of the sudden and unexpected abrogation of their contract, which they had been led to believe would last not only the one year, but for several years, they have sustained great loss and damage. They further represent that they have only received from the United States on account of said contract the gross amount of \$28,950, which would not have sufficed even to feed the number of oxen employed in the service through the winter. The premises considered, petitioners pray your honors to grant such relief as may seem equitable and just.

And your petitioner, G. N. Butt, for himself and as the surviving partner, represents that they are the sole owners of said claim, and that they have never assigned or transferred it to any one else. They also represent that they petitioned Congress for relief in January, 1854; that their petition and accompanying documents and proofs were referred by the House of Representatives to the Committee on Claims, and that no action appears to have been had thereon; and the said House of Representatives have referred the same to the Court of Claims.

GEORGE N. BUTT.
JOHN A. ROCKWELL,
Counsel for petitioner.

PETITION TO CONGRESS.

To the Senate and House of Representatives of the Congress of the United States:

The memorial of Black & Butt, residents of the State of Texas, in the county of Grayson, respectfully represents: That on the 7th day of June, A. D. 1851, they entered into a contract with Captain Alexander Montgomery, assistant quartermaster United States army, for the transportation of army stores, baggage, &c., from Preston, in Texas, to the military post then about to be established on the Brazos river, now called Belknap, (duplicate copy of which is hereto attached, marked "Exhibit A,") and that for the faithful performance of said contract they gave their bond in the penal sum of \$52,000, (see exhibit B.) They represent that in order to comply with their contract they were put to an enormous expense in the purchase of large trains of wagons and teams, to wit: sixty-eight large road wagons and two hundred and seventy-two yokes of oxen; that the wagons and teams

cost on an average three hundred and fifty dollars. They further represent that by their contract they were entitled to retain their contract for at least one year, and were under heavy bonds to keep themselves ready to recommence hauling on the 15th March, 1852, having already performed the service required of them in the year 1851; that the keeping of so many oxen through the winter, in order to have them strong enough to do the service in the spring, involves a heavy expense; that in March, A. D. 1852, they were ready, and so reported themselves to Captain Geo. W. F. Wood, assistant quartermaster United States army, to resume the transportation of army stores, baggage, &c., and were soon after informed that their contract was at an end. This was done verbally, but they are not still relieved from their bond. They further represent, at this time, to wit, the spring of 1852, a contract was entered into between the government of the United States and Travis Wright, of Red River county, Texas, for the transportation of army stores, &c., from Wright's Landing, on Red river, to Preston, instead of employing the discharged teams of your memorialists in this service, thereby doing great injustice to your memorialists, who had faithfully and promptly performed all the duties required of them during the hauling season of 1851. (See exhibits C and D.)

They therefore say that by reason of the unexpected abrogation of their contract, which they were led to believe would not only last one year, but several years, they have suffered great damage, not less than \$15,000, and they ask as a matter of justice that they may be remunerated. (See two affidavits in exhibit E as to these damages.)

BLACK & BUTT,

By their attorney, Richard Burgess.

WASHINGTON, D. C., January 17, 1854.

Agreement between Captain Montgomery and Black & Butt.

This agreement, made the seventh day of June, eighteen hundred and fifty-one, between Captain Alexander Montgomery, assistant quartermaster United States army, in behalf of the United States, on the one part, and Messrs. Black & Butt, of Preston, Texas, on the other part, witnesseth: That the said Messrs. Black & Butt, for the consideration hereinafter named, do hereby promise and agree to transport from Preston, Texas, to the post about to be established on the Brazos river, Texas, (assumed distance one hundred and fifty-eight miles,) such army stores and army baggage as the assistant quartermaster at Preston may require them to transport to said post on the Brazos; that they will deliver the said stores and baggage to the assistant quartermaster at the aforesaid post on the Brazos in like order and condition as when received from the aforesaid assistant quartermaster at Preston, without unreasonable delay, unavoidable losses and damages only excepted; that they will provide good, well-covered wagons and serviceable teams, with competent drivers, for this service; and that they will transport the said stores as above stated

whenever so required to do, except between the first of December and the fifteenth of March in each year, during which this contract shall remain in force.

And the said Captain Alexander Montgomery, assistant quartermaster, on behalf of the United States, promises and agrees to pay to the said Messrs. Black & Butt three dollars for each and every hundred weight of said army stores and army baggage which they shall transport as above stated, and pro rata for the transportation of said stores and baggage to any point or points west of the Brazos river.

And the said Captain Alexander Montgomery, assistant quartermaster, hereby promises and agrees to cause sufficient military protection to be afforded to the teams employed as above stated, provided the said teams shall be made to move in such order as the officers in command of escorts shall direct.

This contract to remain in force one year from date, or longer, as may be determined by the said Captain Alexander Montgomery, assistant quartermaster, or by his successor.

The payments under this contract to be made quarter-yearly, or as soon after the expiration of each quarter as it may be possible for the said Captain Alexander Montgomery, assistant quartermaster, or his successor, to procure funds wherewith to make the payments.

In witness whereof, the parties hereunto have set their hands and seals.

Done in triplicate at Fort Smith, Arkansas, the day and year first above written.

A. MONTGOMERY,
Captain and A. Q. M.
BLACK & BUTT.
WM. H. HUNT.
J. D. FITZGERALD.

Witness:

J. R. KANNADY.
W. H. AILES.

STATE OF TEXAS, *Fannin County*:

Before me, Samuel A. Roberts, a notary public in and for the State and county aforesaid, personally appeared John D. Black and George N. Butt, to me well known, who severally acknowledged that they signed the above and foregoing article of contract by the name of Black & Butt, for the purposes and consideration therein expressed.

[L. s.] To certify which I have granted this certificate under my hand and seal notarial this 17th day of June, A. D. 1851.

SAM'L A. ROBERTS,
Notary Public.

EXHIBIT B.

Bond to secure performance of agreement.

Know all men by these presents that we, Black & Butt, William H. Hunt, and J. D. Fitzgerald, are held and firmly bound to the United States of America in the amount of fifty-two thousand dollars, lawful money of the United States, for which payment to be well and truly made we bind ourselves and each of us, our and each of our heirs, executors, and administrators, for and in the whole, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 17th day of June, 1851.

The condition of this obligation is such that if the above bound Black & Butt, their heirs, executors, or administrators, or any of them, shall and do in all things faithfully perform all the stipulations of a contract for the transportation of army stores and army baggage from Preston, Texas, to the Brazos river, Texas, bearing date the 7th day of June, 1851, which the said John D. Black and George M. Butt have agreed to perform according to the true intent and receiving thereof, then this obligation to be void, otherwise to remain in full force and virtue.

BLACK & BUTT.

W. H. HUNT.

J. D. FITZGERALD.

STATE OF TEXAS, *County of Fannin:*

Before me, Samuel A. Roberts, a notary public in and for the State and county aforesaid, personally appeared John D. Black and George N. Butt, William H. Hunt, and J. D. Fitzgerald, to me well known, who severally acknowledged that they signed the within bond for the true intent and purposes therein expressed.

To certify which I have granted this my certificate under my hand and seal this 17th day of June, A. D. 1851.

SAMUEL A. ROBERTS,

Notary Public.

I certify that the within is a correct copy.

A. MONTGOMERY,

Captain, Assistant Quartermaster United States Army.

EXHIBIT D.

Certificate of Captain Lynde.

This is to certify that Messrs. Black & Butt, that is, John D. Black and George N. Butt, transported three hundred and fifty-five thousand five hundred and sixty-six pounds of public stores from Preston, Texas, to Fort Belknap, Texas, by virtue of a contract between Captain Alexander Montgomery, assistant quartermaster, on

the part of the United States, dated at Fort Smith the seventh (7th) day of June, eighteen hundred and fifty-one, (1851,) and that on the twelfth (12th) day of July the said Black & Butt started their first train, which was as soon as required, and continued on until the thirtieth (30th) of September of the said year, (1851,) at which time I was relieved by Major G. W. F. Wood of the duties of the depot at this place.

I further certify that the said Black & Butt used due diligence, and that they transported or forwarded all such goods as given them promptly.

J. LYNDE,
Captain Fifth Infantry.

PRESTON, TEXAS, *December 15, 1852.*

EXHIBIT C.

Certificate of Major Wood.

I certify that whilst on duty at Preston, Texas, and in charge of the depot at that place, that Black & Butt, (that is to say, G. N. Butt and J. D. Black,) transported and delivered at the post of Camp Belknap the following number of pounds of public property and stores, viz: forty-seven thousand seven hundred and twelve pounds of freight in good order and condition, in obedience to a contract made by Captain A. Montgomery, assistant quartermaster United States army, and the said Black & Butt. And that in the spring of 1852 the said Black & Butt, in good faith, supposing said contract to be in full force, stated they were in readiness to transport any supplies for the said post that the quartermaster might deliver to them, but that I was authorized and otherwise instructed, and ordered to transport the supplies for the post above mentioned by government teams; and that, in consequence of said order, the said Black & Butt have asked of me this certificate, in order to show the department the injury they have sustained by not being permitted to transport the stores, as they considered the contract required they should; and that they were in readiness to comply with the contract at the time of the arrival of the stores at Preston in the spring of 1852. So stated by them.

GEO. W. F. WOOD,
Assistant Quartermaster.

AUSTIN, TEXAS, *January 24, 1853.*

EXHIBIT E.

Affidavit of Joseph Blackwell.

STATE OF TEXAS, *Fannin County:*

Before me, Samuel A. Roberts, a notary public in and for the county and State aforesaid, authorized by law to administer oaths for general purposes, personally appeared Joseph Blackwell, to me well known

as a man worthy of belief, who, being solemnly sworn, made and subscribed the following affidavit, viz :

During the summer and early part of the autumn of 1851 I was in the employ of Messrs. Black & Butt, who were engaged in the transportation of army stores and baggage from Preston, in Texas, to Fort Belknap, on the Brazos ; that he acted in the capacity of wagon-master ; that Black & Butt had to purchase a large number of wagons and teams, at short notice, and at a time of the year (the spring) when oxen are always considerably higher in Texas than they are in the fall. During the time affiant was in the employ and acting as wagon-master, to wit: from the commencement of the hauling season in 1851, say about the 1st of June, to the time the contract was taken from Messrs. Black & Butt, which affiant thinks was early in the fall of 1851, the train of wagons and teams engaged in said transportation consisted of from sixty to seventy wagons.

Affiant further saith, that, in his opinion, considering the high prices paid for their teams in the spring, and their heavy losses on them when sold in the fall, and the many other incidental expenses incurred by Messrs. Black & Butt to prepare for the completion of their heavy contract, the said Black & Butt suffered damages to the amount of \$15,000 by the taking of the contract from them.

JOSEPH BLACKWELL.

Witness : R. C. STEWARD.

[L. s.] To certify which I have hereunto set my hand and seal of office this 27th day of October, A. D. 1853.

SAMUEL A. ROBERTS,
Notary Public of Fannin County.

STATE OF TEXAS, *Fannin County* :

Before me, Samuel A. Roberts, a notary public in and for said county, personally appeared Sampson W. Fitzgerald, to me well known as a witness worthy of full belief, who, being solemnly sworn, saith :

That he has read the deposition of Joseph Blackwell written on this sheet ; that affiant was employed by Messrs. Black & Butt at the same time as said Blackwell, as wagon-master ; that all the facts set forth in Blackwell's affidavit are, as affiant verily believes, true, and that the damage sustained by said Black & Butt, as estimated by said Blackwell, is in the opinion of the witness rather under than over the real and actual damage suffered by them.

S. W. FITZGERALD.

Witness : RICHARD S. HUNT.

[L. s.] To certify which I have hereunto set my hand and seal of office this 10th day of November, 1853.

SAMUEL A. ROBERTS,
Notary Public.

Statement of loss.

PRESTON, *Grayson County, Texas.*

This is to show the account current of the getting up of a train of seventy wagons and teams, and the expenses or costs of foraging said teams, and pay of teamsters thereunto attached, &c.

To do the transportation of the United States government supplies for the fifth *infantry* of United States troops from Preston, Texas, to Camp or Fort Belknap, Brazos river, Texas, to carry out a contract made in good faith, in June, 1851, with Captain A. Montgomery, assistant quartermaster, at Fort Smith, Arkansas, and by the order and consent of General Arbuckle, they as agents on the part of the United States, and Black & Butt, contractors.

United States to Black & Butt, Dr.

1851, to 10 Bois d'Arc wagons and teams, (80 oxen).....	\$4,000 00
To 60 wagons and teams, \$325, (480 oxen).....	19,500 00
December 15, to first of April, 1852, to 12,320 bushels corn for teams, at 90 cents.....	11,088 00
To 300 tons hay, at \$4 per ton.....	1,200 00
Hire of 70 teamsters from 1st July to December 15, at \$20 per month.....	7,700 00
Rations per teamster, for 70 teamsters, 5½ months, at \$5 per man per month.....	1,900 00
Lost, died, and strayed, (42 oxen,) no charges.....	
	<hr/>
	45,413 00
Credit by cash received	28,950 00
	<hr/>
Due us by the United States this amount.....	16,463 00
	<hr/> <hr/>

BLACK & BUTT, *Contractors.*

STATE OF TEXAS, *Fannin County:*

Before me, Samuel A. Roberts, a notary public in and for the county and State aforesaid, personally appeared George N. Butt, one of the firm of Black & Butt, and well known to me, who, being sworn, said that the items charged in the within account are set down at their fair cash value, and, as far as can now be ascertained, at cost; and that the credits on accompanying sheet, marked "Exhibit A," cover all the money received by Black & Butt for the several items specified in said account.

G. N. BUTT.

Sworn to and subscribed this 9th day of March, A. D. 1854. Wit-
[L. S.] ness my hand and official seal.

SAMUEL A. ROBERTS,
Notary Public, Fannin County.

*Affidavit of S. W. Fitzgerald and Joseph Blackwell.*STATE OF TEXAS, *Fannin County*:

Before the undersigned notary public, within and for the county and State aforesaid, authorized by law to administer oaths for general purposes, personally appeared Sampson W. Fitzgerald and Joseph Blackwell, who, being sworn, say that they were both engaged as wagon-masters for Black & Butt during the hauling season of 1852; that they are both practical wagoners, and have bought and sold both wagons and teams for the last six or eight years in this portion of Texas, and are well acquainted with the value of such property; and that the prices charged for wagons and teams by Black & Butt, in the within act, are as low as they could be bought at; and that they are credited at fully as much as they were worth. They also state the price charged for corn for fodder of oxen, and the quantity required for that purpose, are both as low as it could be done for, as is also hire of teamsters.

S. W. FITZGERALD.

his
JOSEPH + BLACKWELL.
mark.

Sworn to and subscribed before me this 8th day of April, 1854.

[L. S.]

SAMUEL A. ROBERTS,
Notary Public.

Statement of Black & Butt.

We deem it proper and necessary to give a true statement and correct report to the departments to which our claims and accounts against the United States may be investigated, and to explain to the same the nature of our contract and the flattering inducements held out to us by the United States agents at Fort Smith, Arkansas, and the great risk of such a contract on our part. The country which we had to transport to and through was almost entirely unknown, and particularly so to wagoning; and the almost limitless extent of the route to which we were bound by a heavy bond to carry all and such amount of transportation which might be required for us to transport; and we were also induced to believe that the amount would be large, and that if the Belknap line of posts should be kept up we would have to do the carrying of the supplies for two years. We were particularly cautioned by Captain A. Montgomery that we should be vigilant and have a large train as soon as it was possible to be had, as the regiment was to move immediately. We complied and had everything on foot immediately, and was ready with seventy good wagons and teams

when called for, as every officer in the Fort Washita command will testify to, viz: Lieutenant Abbott, Captain Whetall, Doctor Baley, Captain Dent, and, in fact, the whole of the regiment.

Colonel Miles solicited the contract to be made with us. We will also refer you to Captain Marcy in regard to us as business men, and Colonel Loomis also.

You may think the item of corn in our account an exorbitant one; if so, I will refer you to Major G. W. F. Wood, who told us in the spring and first part of the summer of 1852 if we had our corn that we fed to our oxen in the winter and spring that he would pay us one dollar and twenty-five cents the bushel for every bushel we had had, as he did nearly all of his teaming with little or no forage. He had to haul corn one hundred miles and pay one dollar and ten cents the bushel; consequently at the end of the season his train was killed up and worthless. We will also refer you to Major Wood in regard to our readiness in the spring of 1852 to carry out our contract in regard to the transportation from Preston to Fort Belknap, or anything in regard to us as punctual men.

In regard to the abrogation of our contract on the part of the United States I think it is unnecessary to make any remark, as Colonel Hunt, of New Orleans, knows we went to see him in regard to it after he had made a contract with T. G. Wright for the transportation of the same that we should have had.

In conclusion we beg of you to treat our claim with due consideration, and examine our accounts on both *debit* and *credit side*, and see the amount claimed by us of the United States. The amount which we claim is a small amount to what we would have made if the United States had acted in good faith on their part with us. In our account against the United States we have said nothing of forty-two head of oxen which we lost, died and strayed; neither have we said anything in regard to the interest on the amount which we claim as honestly due us by the United States.

Gentlemen, we cheerfully leave our claim to your honest consideration, and will willingly abide your decision.

Very respectfully, your obedient servants,

BLACK & BUTT.

Statement of moneys received by Black & Butt.

This is to show the account current of the disposition or sales of the outfit of wagons and teams, disposed of in March and April, eighteen hundred and fifty-two, after we, Black & Butt, had been officially informed or notified by Major G. W. F. Wood, assistant quartermaster of the depot at Preston, Texas, that Colonel T. F. Hunt, of New Orleans, had made other contracts and arrangements for the transportation of the government stores, &c., and that our contract was abrogated on the part of the United States, and that our services were no longer required.

United States in account with Black & Butt, Cr.

April, 1852—Sold Captain Marcy, United States army,	
20 oxen, at \$20	\$400 00
By 10 Bois d'Arc wagons and 80 oxen, at	
the rate of \$350 for each wagon, and 8 oxen	3,500 00
By 60 wagons, at \$100	6,000 00
May, 1852—By 418 oxen, at \$30 per pair	6,270 00
In July, August, September, October, and	
November, transported 426,000 pounds of	
United States government stores, at \$3 per	
100 pounds.....	12,780 00
Total amount of cash received.....	<u>28,950 00</u>

BLACK & BUTT, *Contractors.*PRESTON, *Grayson County, Texas.**List of stores sent by train to the Brazos August 9, 1851.*

	Pounds.	Pounds.
Butt & Black, No. 11.—40 sacks flour.....		4,000
Butt & Black, No. 13.— 4 bbls. bread, 114, 106, 118,		
119.....	457	
7 bbls. sugar, 230, 225, 235,		
291, 255, 263, 265.....	1,764	
15 sacks flour, 1,500; 1 bbl.		
rice, 228.....	1,718	
	<u>3,949</u>	
Butt & Black, No. 5.— 2 bbls. bread, 114, 115; 4		
bbls. beans, 15½ bus., 992..	1,221	
16 boxes bacon, 130, 133, 145,		
132, 159, 131, 130, 137,		
130, 136, 128, 138, 135,		
128, 162, 132.....	2,186	
5 sacks flour.....	500	
	<u>3,907</u>	
J. Blackburn.—Iron and steel.....		2,562
J. Blackburn.—13 sacks flour, 1,300; 3 bbls. sugar,		
261, 260, 255.....	2,076	
3 bbls. rice, 235, 242, 232.....	709	
	<u>2,785</u>	

	Pounds.	Pounds.
Wm. Allen.—Iron and steel.....	1,570	
1 box iron bedsteads.....	420	
7 boxes bacon, 128, 138, 137, 128, 145, 125, 135.....	936	
	<hr/>	2,926
Butt & Black, No. 12.— 6 bbls. sugar, 275, 236, 271, 243, 247, 265.....	1,537	
2 bbls rice, 240, 271; 2 bbls. bread, 111, 118.....	740	
14 sacks flour.....	1,400	
	<hr/>	3,677
Wm. Fitzgerald.—2 bbls. beans, 7½ bus., 480; 1 bbl. rice, 253.....	733	
4 bbls. bread, 113, 105, 115, 112...	455	
5 bbls. sugar, 262, 245, 262, 246, 276.....	1,291	
2 boxes bacon, 163, 144; 12 sacks flour, 1,200.....	1,507	
	<hr/>	3,976
F. N. Hackney.—3 bbls. rice, 233, 237, 235; 1 bbl. sugar, 259	964	
2 bbls. coffee, 193, 193; 3 boxes ba- con, 141, 142, 133.....	802	
6 bbls. bread, 115, 100, 98, 114, 100, 108.....	635	
12 sacks flour.....	1,200	
	<hr/>	3,601
Butt & Black, by T. Mylam.—12 sacks salt.....	1,200	
15 boxes soap.....	720	
15 boxes candles.....	476	
16 sacks flour.....	1,600	
	<hr/>	3,996
Butt & Black, by Spencer.—4 boxes bacon, 138, 141, 144, 160.....	583	
13 sacks salt, 1,300; 22 sacks flour, 2,200.....	3,500	
	<hr/>	4,083
Butt & Black, by Bell.—6 bbls. bread, 100, 112, 113, 100, 113, 112.....	650	
4 bbls. vinegar, 278, 294, 284, 234.....	1,090	
4 bbls. pork, 1,200; 8 sacks flour, 800.....	2,000	
	<hr/>	3,740

	Pounds.	Pounds.
Butt & Black, by W. Coffee.—6 bbls. apples, 720 ; 6		
bbls. pork, 1,800.....	2,520	
15 sacks flour.....	1,500	
	<hr/>	4,020
John Martin.—11 bbls. vinegar, 292, 300, 252, 270,		
284, 284, 220, 274, 274, 158, 281...	2,889	
5 boxes bacon, 145, 144, 145, 132, 117.	783	
1 sack, 100 ; 8 sacks flour, 800.....	900	
	<hr/>	4,572
J. Bell.—6 bbls. coffee, 202, 197, 208, 192, 186, 193..	1,178	
4 bbls. rice, 233, 227, 223, 238	921	
2 bbls. sugar, 190, 247 ; 8 sacks flour, 800..	1,237	
	<hr/>	3,336
J. L. Hiesten.—10 bbls. pork, 3,200 ; 1 bbl. vinegar,		
286.....	3,486	
3 sacks salt.....	300	
	<hr/>	3,786
Robert McFall.—1 load of company stores, estimated		
weight.....		3,500
B. M. Carr.—17 kegs nails, 1,700 ; 2 boxes broad-axes,		
55, 58.....	1,813	
3 boxes company clothing, 234, 180,		
190 ; 1 bale, 80.....	684	
10 sacks flour, 1,000 ; 5 sacks salt, 500..	1,500	
	<hr/>	3,997
P. T. Andrews.—2 bbls. tar, 400, 168 ; 1 grind-stone,		
200 ; 2 coils rope, 159, 158.....	1,085	
2 boxes company clothing, 240, 196 ;		
15 sacks flour, 1,500.....	1,936	
	<hr/>	3,021
Butt & Black, by Ben.—4 boxes, 234, 396, 290, 155 ;		
2 bales paulins, 218, 215...	1,508	
2 bales tents, 104, 106 ; 23		
sacks flour, 2,300.....	2,510	
	<hr/>	4,018
Ingram, by Bradly.—3 boxes, 230, 230, 115 ; 6 bbls.		
pork, 1,920.....	2,495	
11 sacks flour.....	1,100	
	<hr/>	3,595

	Pounds	Pounds.
A. Myers.—3 boxes, 244, 220, 194 ; 2 bbls. bread, 111, 123.....	892	
2 bbls. pork, 640 ; 1 box stationery, 53 ; 9 sacks flour, 900.....	1,593	
	<hr/>	2,485
A. Myers.—32 boxes quartermaster's stores, 200, 133, 166, 200, 200, 164, 209, 155, 146, 50, 46, 57, 47, 59, 58, 61, 59, 59, 48, 60, 48, 56, 59, 59, 60, 38, 51, 47, 59, 39, 45, 59.....	2,797	
2 sacks flour, 200.....	200	
	<hr/>	2,997
Clark.—Iron and steel, 1,250 lbs.; 4 boxes, 200, 450, 275, 208.....	2,383	
8 kegs of nails, 800 lbs.; 6 barrels bread, 105, 121, 106, 99.....	1,231	
4 sacks flour.....	400	
	<hr/>	4,014
Clark.—Iron and steel, 1,250 lbs.; 2 tierces, 186, 204 ; 2 barrels pork, 640.....	2,280	
2 barrels coffee, 185, 193 ; 1 barrel bread, 108 ; 3 sacks of flour, 300.....	786	
	<hr/>	3,066
Geo. Graham.—4 barrels beans, $3\frac{3}{4}$, $3\frac{3}{4}$, $3\frac{3}{4}$, $3\frac{1}{2}$, 944 lbs.; 2 barrels coffee, 182, 204.....	1,330	
3 barrels sugar, 272, 258, 278 ; 4 barrels rice, 238, 246, 237, 230.....	1,759	
8 barrels bread, 108, 112, 105, 108, 121, 115, 112, 96 ; 2 sacks flour, 200 lbs.	1,077	
	<hr/>	4,166
Perry Graham.—5 barrels rice, 229, 242, 242, 248, 240 ; 1 barrel beans, 4 bushels, 256.....	1,457	
3 barrels coffee, 196, 187, 193 ; 4 sacks flour, 400 lbs.....	973	
9 barrels bread, 115, 111, 125, 114, 122, 106, 108, 120, 115.....	1,036	
3 barrels sugar, 260, 260, 268.....	788	
	<hr/>	4,257
Geo. Graham.—5 barrels sugar, 269, 268, 268, 257, 275 ; 2 barrels coffee, 193, 198.....	1,728	
4 barrels beans, $3\frac{1}{2}$, $3\frac{3}{4}$, 4, $3\frac{1}{4}$, 938 lbs.; 4 barrels bread, 102, 118, 119, 102....	1,379	
	<hr/>	3,107

	Pounds.	Pounds.
J. Howard.—4 barrels coffee, 186, 191, 185, 186; 7 barrels sugar, 260, 280, 268, 242, 248, 300, 258.....	2,604	
1 barrel beans, 4,266 lbs.; 1 barrel ap- ples, 120 lbs.....	386	
5 barrels bread, 105, 114, 106, 103, 106; 5 sacks flour, 500 lbs.....	1,034	
	<hr/>	4,024
D. C. Foster.—6 barrels sugar, 290, 269, 251, 285, 256, 268.....	1,619	
3 barrels coffee, 190, 195, 190; 3 bar- rels beans, 4, 3 $\frac{3}{4}$, 3 $\frac{1}{2}$, 720 lbs.....	1,295	
6 barrels bread, 94, 95, 103, 110, 107, 112; 2 sacks flour, 200 lbs.....	821	
	<hr/>	3,735
D. C. Foster.—3 barrels beans, 3, 3 $\frac{3}{4}$, 3 $\frac{1}{2}$, 656 lbs.; 1 barrel sugar, 252 lbs.....	908	
5 barrels coffee, 195, 195, 197, 200, 188; 3 barrels rice, 233, 243, 234.....	1,685	
1 barrel apples, 120 lbs.; 3 sacks flour, 300 lbs.....	420	
	<hr/>	3,013
R. S. Patten.—42 boxes soap.		2,016
R. E. Shannon.—8 barrels pork, 2,560 lbs.; 5 boxes candles, 32, 32, 33, 33, 33....	2,723	
6 boxes soap, 288 lbs.; 5 sacks flour, 500 lbs.....	788	
	<hr/>	3,511
Geo. Graham.—5 barrels apples, 600 lbs.; 2 screw plates, 14 lbs.; 5 barrels bread, 114, 107, 120, 121, 105.....	1,177.4	
9 sacks flour.....	900	
	<hr/>	2,077.4
A. Myers.—11 boxes candles, 32, 32, 32, 31, 33, 33, 31, 32, 32, 33, 32.....	353	
18 boxes soap, 864 lbs.; 4 barrels salt, 374, 286, 286, 286; 4 sacks salt, 800 lbs....	2,896	
1 barrel rice, 242 lbs.; 3 barrels bread, 106, 115, 120.....	593	
	<hr/>	3,842
W. Martin.—24 kegs nails, 2,400 lbs.; 6 barrels bread, 104, 111, 108, 99, 116, 113.....		3,050

Pounds.

Hackney.—9 barrels bread, 110, 110, 106, 110, 114,
114, 117, 116, 114; 18 kegs nails,
1,800 lbs..... 2,811

A. Myers.—4 sets w. tent poles; 20 sets c. tent poles,
450 lbs.; 2 blacksmiths' bellows, 328 lbs. 778

Butt & Black.—4 buckets.....

J. LYNDE, *Capt. 5th Infantry.*

List of stores sent by train to the Brazos, September 10, 1851.

Pounds. Pounds.

John Miller.—8 boxes bacon 137, 135, 134, 152, 136,
138, 148, 132..... 1,112
1 barrel coffee, 190 lbs.; 4 barrels apples,
440 lbs..... 630
3 barrels bread, 112, 118, 101; 5 sacks
flour, 500 lbs..... 831
————— 3,573

Thos. Yager.—18 boxes bacon, 134, 155, 136, 127, 141,
132, 145, 154, 130, 120, 144, 140,
139, 141, 131, 137, 143, 131..... 2,480
5 barrels bread, 97, 96, 117, 107, 114.. 531
5 barrels apples, 550 lbs.; 2 sacks
flour, 200 lbs..... 750
————— 3,761

Thos. Yager.—8 barrels pork, 2,560 lbs.; 3 barrels
bread, 113, 110, 97..... 2,880
1 box, 300 lbs.; 4 sacks flour, 400 lbs. 700
————— 3,580

R. Patten.—6 barrels pork, 1,920 lbs.; 4 barrels apples,
440 lbs.; 1 barrel bread, 104 lbs..... 2,464

B. J. Prigmore.—7 barrels pork, 2,240 lbs.; 7 barrels
apples, 770 lbs..... 3,010
3 barrels bread, 95, 104, 120; 2
sacks flour, 200 lbs..... 519
————— 3,529

J. H. Thomas.—7 barrels pork, 2,240 lbs.; 5 barrels
apples, 550 lbs..... 2,790
6 barrels bread, 103, 113, 119, 109,
109, 101; 1 sack flour, 100 lbs..... 754
————— 3,544

	Pounds.	Pounds
Butt & Black, No. 1.—12 barrels pork, 3,840 lbs.; 8 sacks flour, 800 lbs.....		4,640
Butt & Black, No. 2.—12 barrels pork, 3,840 lbs; 4 sacks flour, 400 lbs.....		4,240
W. Coffee.—8 barrels pork, 2,560 lbs.; 5 barrels apples, 550 lbs.....	3,110	
3 barrels bread, 222, 115, 127; 6 sacks flour, 600 lbs.....	964	
		<hr/> 4,074
Wm. Fitzgerald.—12 barrels vinegar, 223, 280, 256, 264, 256, 266, 297, 243, 298, 191, 217, 280.....	3,071	
4 boxes, 275, 165, 210, 13; 24 axe handles, 48; 7 sacks flour, 700.....	1,471	
		<hr/> 4,542
Butt & Black, by Dick Anderson, No. 5.—6 boxes, 265, 260, 255, 265, 200, 250; 1 bundle scythes, 50.....	1,545	
2 bundles leather, 3,585; 23 sacks flour, 2,300 lbs.	2,470	
		<hr/> 4,015
Butt & Black, by Blernson.—11 barrels vinegar, 312, 260, 298, 217, 202, 288, 284, 262, 252, 236, 308.....	2,919	
6 barrels bread, 112, 120, 112, 117, 115, 119; 3 barrels apples, 330.....	1,025	
8 sacks flour, 800 lbs.....	890	
		<hr/> 4,744
J. Compton.—3 barrels coffee, 198, 188, 198; 1 barrel sugar, 275.....	859	
5 barrels beans, 3 4 bush., 2 3 $\frac{1}{4}$ bush., 19 $\frac{1}{2}$ bushels.....	1,170	
9 barrels bread, 114, 96, 118, 117, 110, 130, 115, 123, 108; 1 barrel apples, 110.....	1,141	
		<hr/> 3,170
Butt & Black, No. 4.—1 box, 350; 1 tierce, 250; 25 kegs nails, 2,500.....	3,100	
6 barrels bread, 103, 117, 108, 115, 117, 95; 2 coils rope, 63, 64; 1 sack nails, 50.....	832	
		<hr/> 3,932
Butt & Black.—Company stores, 3,500; 5 sacks flour, 500.....		4,000

	Pounds.	Pounds.
Butt & Black.—10 barrels bread, 100, 114, 104, 108, 115, 112, 108, 108, 102, 121.....	1,092	
32 sacks flour, 3,200.....	3,200	
	<hr/>	4,292
Butt & Black.—7 barrels bread, 109, 102, 122, 105, 107, 115, 112.....	772	
1 barrel apples, 110 ; 37 sacks flour, 3,700.....	3,810	
	<hr/>	4,582
D. C. Foster.—6 barrels beans, 4 3 $\frac{1}{2}$ bush., 1 4 bush., 1 3 $\frac{1}{2}$ bush.; 22 $\frac{1}{2}$ bush.....	1,350	
1 barrel sugar, 265 ; 3 barrels coffee, 199, 193, 186.....	843	
9 barrels bread, 113, 106, 109, 116, 116, 101, 112, 118, 111.....	1,002	
3 sacks flour, 300 lbs.....	300	
	<hr/>	3,495
M. Willmoth.—3 barrels coffee, 196, 191, 195 ; 1 bar- rel beans, 3 $\frac{1}{2}$ bush., 225.....	807	
4 barrels sugar, 267, 260, 259, 255....	1,041	
11 barrels bread, 96, 107, 114, 105, 114, 110, 111, 106, 103, 112, 100.....	1,178	
	<hr/>	3,026
J. B. Compton.—4 sacks flour, 400 lbs.....		400
Mylam.—4 sacks flour, 400 lbs.....		400
Butt & Black, by Bois d'Arc wagon—11 barrels sugar, 250, 250, 252, 265, 255, 256, 269, 235, 248, 259, 276.....	2,815	
22 sacks flour, 2,200.....	2,200	
	<hr/>	5,015
Willcox, by Throgmorton.—6 barrels pork, 1,920 lbs. ; 4 barrels bread, 107, 108, 108, 109.....		2,352
Willcox.—8 barrels pork, 2,560 lbs. ; 3 barrels bread, 106, 112, 104.....	2,882	
5 barrels apples, 550 ; 5 sacks flour, 500....	1,050	
	<hr/>	3,932
Holmes.—10 barrels pork, 3,200 lbs.....	3,200	
3 barrels bread, 118, 108, 112 ; 5 barrels apples, 550.....	888	
	<hr/>	4,088

	Pounds.	Pounds.
Holmes.—8 barrels pork, 2,560 ; 6 boxes axes, 67 lbs., 402 lbs.....	2,962	
8 barrels bread, 112, 117, 109, 105, 106, 119, 108, 102.....	878	
	<hr/>	3,840
Abraham Myers.—9 barrels pork, 2,880 lbs ; 1 sack flour, 100 lbs.....	2,980	
9 barrels bread, 113, 108, 124, 112, 114, 114, 108, 112, 113.....	1,018	
	<hr/>	3,998
Abraham Myers.—8 barrels pork, 2,560 lbs ; 1 sack flour, 100 lbs.....	2,660	
9 barrels bread, 111, 110, 113, 101, 104, 117, 103, 119, 106.....	984	
	<hr/>	3,644
P. T. Andrews.—17 sacks flour, 1,700 lbs. ; 8 barrels bread, 101, 112, 119, 129, 114, 104, 131, 117.....		2,627
Winters.—4 barrels bread, 107, 106, 92, 126.....	431	
6 sacks flour, 600 lbs. ; 6 barrels pork, 1,920	2,520	
	<hr/>	2,951
Hackney.—12 barrels bread, 108, 114, 129, 111, 94, 92, 100, 101, 107, 108, 95, 96.....	1,255	
6 barrels pork, 1,920 lbs.....	1,920	
	<hr/>	3,175
Fitzgerald.—40 sacks flour, 4,000.....		4,000
A. Myers's two wagons.—1 mill ; 1 grindstone.....	3,700	
23 sacks flour, 2,300.....	2,300	
	<hr/>	6,000
Clark.—9 barrels bread, 107, 116, 110, 112, 108, 116, 121, 107, 106.....	1,003	
27 sacks flour, 3,700.....	2,700	
	<hr/>	3,703
Clark.—10 barrels bread, 106, 113, 105, 117, 98, 113, 109, 104, 112, 110.....	1,087	
1 bundle scythe snathes, 22 lbs ; 24 sacks flour, 2,400 lbs.....	2,422	
	<hr/>	3,509
Ingram.—35 sacks flour, 3,500 lbs.....		3,500

	Pounds.	Pounds.
W. T. Lankford.—6 barrels bread, 117, 110, 120, 104, 130, 105.....	686	
1 barrel apples, 110; 32 sacks flour, 3,200	3,310	
	<hr/>	3,996
Blundlen, by J. Blackwell, Cr.—8 barrels bread, 108, 107, 128, 112, 110, 106, 110, 93.....	874	
26 sacks flour, 2,600.....	2,600	
	<hr/>	3,474
Total.....		<hr/> <hr/> 136,807

J. LYNDE,
Captain 5th Infantry.

Statement of corn and oats received on G. N. Butt and John D. Black's contract.

22

Date.	By whom delivered.	CORN.				OATS.			
		No. of sacks.	Weight.	Weight of sacks.	Net weight.	No. of sacks.	Weight.	Weight of sacks.	Net weight.
1851.			Pounds.	Pounds.	Pounds.		Pounds.	Pounds.	Pounds.
Dec. 9	S. D. Brown					23	3,485	33	3,452
	W. C. Brown					25	3,219	20	3,199
	W. B. Carter					26	3,135	20	3,115
Dec. 10	J. B. Miller					17	2,180	12	2,168
	W. Coffee	27	4,524	18	4,506				
	Joseph Steel	21	3,592	15	3,577				
	Hackney					34	2,654	25	2,629
	Hackney					33	2,631	25	2,606
	M. Vadon					18	2,337	15	2,322
	J. B. Miller					21	2,703	18	2,685
	Samuel Vadon					11	2,221	9	2,212
	Josh. McCanty					15	2,132	11	2,121
	do					20	2,536	16	2,520
	Wood					21	2,752	19	2,733
Dec. 11	Chas. A. Burns					25	3,277	19	3,258
	do					19	3,100	25	3,075
	J. S. Burns	24	3,809	18	3,791				
	do	22	3,462	16	3,446				
	L. J. Burns	23	3,659	17	3,642				
	P. Thompson	11	2,739	15	2,724				
	Holt	21	4,030	21	4,009				
	Holt	8	1,208	7	1,201	10	1,301	10	1,291
	F. Bacon	11	2,716	12	2,704				
	F. Bacon	13	2,814	14	2,800				
	F. Bacon	13	3,059	18	3,041				
	F. Bacon	16	3,402	18	3,384				
Dec. 13	D. G. Bell	11	2,487	11	2,476	6	722	6	716

GEORGE N. BUTT.

Dec. 15	J. Ingram -----	14	2,356	14	2,342	3	596	4	592
	Emberson -----	21	4,914	24	4,890				
	Shannon -----					19	3,114	23	3,091
	Fitzgerald -----	15	3,192	18	3,174	2	257	2	255
	Matthews -----	18	2,992	16	2,976				
	Kelton -----	24	3,821	21	3,800				
	Fitzgerald -----	24	3,853	22	3,831				
	Beall -----	29	4,584	23	4,561				
	Fitzgerald -----	24	3,909	20	3,889				
	Reynold -----	14	2,937	18	2,919	3	475	3	472
	Rowlett -----	14	3,066	18	3,048	4	502	4	498
	Henry -----	22	3,672	19	3,653				
	Potts -----	22	3,547	17	3,530				
	Matthews -----	22	3,398	18	3,380				
Dec. 18	Owen -----	22	3,517	17	3,500				
	Reynold -----	22	3,505	17	3,488				
	Blevun -----	20	3,108	16	3,092				
		548	97,872	498	97,374	355	45,329	319	45,010

Corn—97,374 pounds, at 52 pounds per bushel, = 1,872 bushels and 18 quarts.

Oats—45,010 pounds, at 32 pounds per bushel, = 1,406 bushels and 18 quarts.

Received, new post on Red Fork, Brazos, Texas, of G. N. Butt and John D. Black, corn and oats contractors, eighteen hundred and seventy-two bushels eighteen quarts of corn, and fourteen hundred and six bushels eighteen quarts of oats, as per annexed statement.

I enclose with this a war warrant for \$2,100, which pays for 875 bushels of the corn above referred to.

Corn, bushels, 1,872 $\frac{18}{32}$.

Oats, bushels, 1,406 $\frac{18}{32}$.

E. T. ABBOTT,
1st Lieutenant 5th Infantry, regiment mounted rifles.

QUARTERMASTER GENERAL'S OFFICE,
Washington, July 5, 1856.

SIR: I herewith enclose the papers in the claim of Messrs. Black & Butt, as requested in your letter dated the 21 ultimo.

These papers were received from the Hon. J. P. Edgerton, chairman of the Committee of Claims, on the 7th February, 1854, with a request that the committee be furnished with all the important facts known to this office in relation to the claim. At that time there were no facts on file here which would throw sufficient light upon the matter, and measures were taken to procure them. One of the officers whose statement was deemed necessary, the late Brevet Major G. W. F. Wood, died before making a report, and the other I had no opportunity of obtaining one from, owing to his absence on duty in the field. Believing then, as I do now, that the claim is without any foundation in justice, the papers were laid aside and escaped notice in the multiplicity of business until called upon for them on the second ultimo.

In the year 1851 several important changes of the stations of the troops were made on the northern frontier of Texas, which required more means of transportation than could be supplied by the public teams then in that section of the country. Measures were taken to supply this deficiency, and the officer who had charge of the movements (Captain Alexander Montgomery, assistant quartermaster at Fort Smith, Arkansas) informed of them. Previously to its arrival, however, it became necessary for him to hire transportation for part of the stores, and Captain Montgomery entered into the contract with Messrs. Black & Butt upon which they base their claim for damages. On the receipt of the contract at this office, Captain Montgomery was reminded that contracts for transportation should not be made for a year without special instructions from the Quartermaster General's office; but it was noticed in regard to this one that "as the contractors were bound to transport such army stores as were delivered to them only, and that the public was not bound to furnish any stated quantity, should the public teams sent him prove sufficient for the service the contract would cease to operate." This shows the construction placed upon the contract here at the time, and it is the same as would be applied to it by the accounting officers of the treasury were it submitted to them; it is the same also placed upon it by Captain Montgomery, who made it, as will be seen by his letter dated June 16, 1856, a copy of which is herewith enclosed. It will be seen by his letter that he remained at Fort Smith until the spring of 1854, and never was informed by the contractors that they were dissatisfied with his decision or intended claiming damages.

Upon an examination of the papers filed by the memorialist through an agent, it appears that at no time during the year 1851 had they more than *thirty-eight* wagons employed in executing their contract on the route from Preston to Fort Belknap, and that of these 38 but *nine* were owned by them. The remainder, it would appear, were owned by about twenty different persons whom they employed to enable them to perform the service. Yet the memorialists, by their

agent, state that sixty-eight large road wagons were purchased. The distance from Preston to Belknap is estimated in the contract at 158 miles; a trip could be made in 25 to 30 days, and as it appears from the statements submitted that 403,278 pounds of army stores were transported from June to December, 1851, that all could have been transported by about *thirty* good wagons and teams. The contractors were employed by their agreement nearly six months in 1851, during which they hauled, as above, 403,278 pounds, at three cents per pound, \$12,098 34; with this they were, it seems, satisfied. By the terms of their contract they ceased work the 1st December, 1851, and could not be called upon to perform any service until the 15th March, 1852. The contract ceased the 6th June, 1852; had these been stores to haul, and had they hauled them, they would have earned in 1852, at the same ratio, about \$6,000; yet they claim at least \$15,000 damages, twice and a half more than they would have earned.

The only evidence submitted with the memorial is an affidavit of one Joseph Blackwell, and which is in conflict with the memorial. Blackwell *thinks* the contract was taken from his employers early in the fall of 1851, and by "the heavy losses on the cattle when sold in the fall" they suffered "damage to the amount of \$15,000," while the memorial states "that the keeping of so many oxen through the winter, in order to have them strong enough to do service in the spring, involved a heavy expense," &c.

The memorial states that the contractors "were put to an enormous expense in the purchase of large trains of wagons and teams, to wit, 68 large road wagons and 272 yokes of oxen;" if they were purchased it could not have been warranted under the contract, and I do not consider the public liable for the mismanagement or want of judgment on the part of the contractors.

The memorialists acknowledge they were notified there would be no stores for transportation in 1852, but they were not released from their bond. What they mean by this is not understood, as they certainly were released when the contract ceased to have effect, and it could not be renewed without a new and mutual agreement of both parties. They also complain of injustice having been done them by a contract having been made with Travis Wright in the spring of 1852, for the transportation of army stores from Wright's Landing, on Red river, to Preston, whereas this contract was made in New Orleans January 7, 1852, upwards of two months before the United States could have called on the memorialists in that year to perform any service under their contract. It was a contract for the delivery of stores from a distance *at* Preston. Captain Montgomery had nothing to do with it; and the quartermaster at Preston had no agency or control over it further than to receive the stores on their arrival. The memorialists have no right whatever to complain, as not a pound of the stores passed over any part of the route embraced in their contract.

It may be proper to state that Messrs. Black & Butt had been engaged in various contracts with the department in the transportation of troops, stores, and furnishing forage, (corn and oats,) and were, at the very time, under a contract for the delivery of 4,000

bushels of corn and 6,000 bushels of oats at Fort Belknap, between the 1st of October, 1851, and the 20th of May, 1852. Even in the execution of this contract it would appear that many private wagons were employed by them and but few of their own; had they had at the time sixty-eight large road wagons, why were they not employed?

I consider the claim upon the evidence submitted and the facts ascertained to be without any foundation whatever.

Copies of the papers referred are herewith enclosed.

I remain, sir, very respectfully, your obedient servant,

THOMAS S. JESUP,

Quartermaster General.

Hon. JAMES BISHOP,

*Acting Chairman Committee on Claims,
Washington, D. C.*

QUARTERMASTER GENERAL'S OFFICE,

Washington City, August 7, 1851.

CAPTAIN: Your letter of the 11th ultimo, enclosing your monthly papers for June, and contracts for transportation of stores and a supply of hay, to be delivered at Fort Smith, is received.

It would appear from your letter that you had not received the fifty mule-wagons and teams which were sent you from Fort Leavenworth, nor that General Stanton had advised you of their having been sent. I trust that they will have arrived in time to take the place of the contractor's ox-teams which have been destroyed by disease.

In regard to the contract made with Black & Butt, I have to remark that contracts for transportation should not be made for a year without first having received special instructions from this office; but, as I observe, they are only bound "to transport such army stores as the assistant quartermaster at Preston may require," and that he is not bound to furnish any given quantity; should your public teams prove to be sufficient for all purposes, the contract will cease to operate and no inconvenience will arise from its having been made.

CHARLES THOMAS,

Deputy Quartermaster General, in charge.

Captain A. MONTGOMERY,

Assistant Quartermaster, Fort Smith, Arkansas.

WASHINGTON, June 16, 1856.

GENERAL: I have examined the claim of Messrs. Black & Butt for losses sustained by reason of the contract concluded June 7, 1851, between these gentlemen and myself. At the time this contract was entered into it was well understood by them, and it is so expressed in the contract, that they were to transport *only* such stores and baggage

as the officers of the quartermaster's department might require them to transport from Preston, Texas, to the posts to be established on the waters of the Brazos river. They were bound by the contract to hold themselves in readiness for the space of "one year" or longer, as might be determined by *myself* or by my *successor*, to meet any demand that might be so made upon them for such transportation; but there is nothing in the contract giving them the exclusive right to transport any amount of freight whatever, so that I might at any time have employed any other transporter without violation of the contract. The contract was purposely so drawn, in order that I might *at any time* dispense with the services of the contractors on finding that the interest of the service would best be subserved by doing so. Accordingly, when the number of public teams under my control sufficed to meet all the demands for transportation upon that line, it no longer was necessary to call upon Messrs. Black & Butt, and they were so informed, although there is nothing in the contract stipulating that they were to receive any notice of the requirements of the department beyond such as might be necessary to enable them to assemble their teams at the depot as occasions required. In July, 1851, a large train of public wagons and teams was sent me from Fort Leavenworth for this service, which so increased my means of transportation that in the spring of 1852 it was not found necessary to employ the wagons and teams of the contractors; and so, as contemplated by the contract, their service was dispensed with.

When Mr. Butt proposed to contract for this service, to satisfy me of his ability to perform it, he stated to me that he had then a number of teams of his own which he employed in hauling from Towson Landing, and from Shreveport to Preston, and that he could *hire* other wagons and teams in the vicinity of Preston. Accordingly, in a settlement I made with him for twenty-four wagons furnished at Preston depot, and eighteen wagons at Washita, in June, 1851, under this contract, the services of which were not immediately required, the cholera having arrested at Fort Smith, Arkansas, the march of the troops for whom transportation to the Brazos had been ordered, Mr. Butt presented receipts from a number of persons of whom he had hired wagons, to establish the fact that he had incurred expenses to a certain amount. If I mistake not, there is a statement filed in the office of the Third Auditor, showing how many of these wagons and teams were claimed by Messrs. Black & Butt, and how many belonged to others. Thus it may have been that these were as many wagons and teams employed by the contractors during the summer and fall of 1851 as represented; but the affiants do not state that they all belonged to Messrs. Black & Butt, or how many were employed at any one time in their service. Were the claim at all admissible, they could only claim for such wagons and teams as were actually purchased by them for this service, (not including those they had before entering upon the contract,) and were owned by them, and employed under this contract during the period alleged. By hiring on each occasion from different individuals, the number of different wagons and teams employed might very well have amounted to the number stated by affiants, and yet but a comparatively small number

have been employed during any one period. The evidence is deficient in this respect. But I cannot find in the contract, or in the circumstances connected with it, any ground whatever for the claim. The claimants knew well that should my means of transportation be increased, I could not give them employment. For this contingency they should have been prepared. They knew in August, 1851, that I had received a large accession of means of transportation, which would in all probability be employed during the succeeding spring in lieu of their teams. Knowing this, if they encumbered themselves with property with so little hope of employing it profitably, they simply committed an imprudence for which the quartermaster's department is in no way answerable.

With the transportation of supplies from Wright's Landing their contract had nothing to do. It only contemplated the transportation of stores, &c., from Preston, Texas, to the Brazos river.

Although I remained on duty at Fort Smith until the spring of 1854, it was only the other day that I learned that Messrs. Black & Butt had preferred this claim, or that they were dissatisfied with the action of the officers of the department under their contract.

The contract was made under special instructions from General Arbuckle, then commanding the 7th military department.

A. MONTGOMERY,

Captain, Assistant Quartermaster, U. S. A.

Maj. Gen. THOMAS S. JESUP,

Quartermaster General, U. S. A., Washington, D. C.

IN THE COURT OF CLAIMS.

GEO. N. BUTT, SURVIVING PARTNER OF BLACK & BUTT, *vs.* THE UNITED STATES.

PETITIONER'S BRIEF.

Statement.

On the seventh day of June, A. D. eighteen hundred and fifty-one, the said firm of Black & Butt entered into a contract with Captain Alexander Montgomery, assistant quartermaster of the United States army, to transport from Preston, Texas, to the post about to be established on the Brazos river, Texas, (assumed distance 158 miles,) such army stores and army baggage as the assistant quartermaster at Preston might require them to transport to said post on the Brazos; that they would deliver the said stores and baggage to the assistant quartermaster at the aforesaid post on the Brazos in the like order and condition as when received from the said assistant quartermaster at Preston, without unavoidable delay, unavoidable losses and damages only excepted; that they would provide good well-covered wagons and serviceable teams, with competent drivers, for this service; and

that they would transport said stores as above stated whenever so required to do, except between the first day of December and the fifteenth day of March in each year that the said contract should remain in force; and the said Captain Montgomery, on behalf of the United States, promised and agreed to pay to the petitioners three dollars for each and every hundred weight of army stores and army baggage which they should transport as above stated, and pro rata for the transportation of said stores and baggage to any point or points west of the Brazos river; and the said Captain Montgomery, assistant quartermaster, promised and agreed to cause sufficient military protection to be afforded to the teams employed as aforesaid, provided said teams were to be made to move in such order as the officers in command of escorts should direct, and that the said contract should remain in force for one year from the date thereof, or longer, as might be determined by the said Captain Montgomery, assistant quartermaster, or his successors.

For the faithful performance of their contract they entered into a bond with approved securities in the penal sum of fifty-two thousand dollars; and, to enable petitioners to comply promptly with the terms of their said contract, they purchased and employed a large train of wagons and teams, to wit, sixty-eight large road wagons, drawn by about two hundred and seventy-two yoke of oxen, and hired the necessary number of teamsters and laborers to attend and manage the same; and faithfully transported all the military stores and baggage and performed all the services required of them by their contract during the year 1851. Never doubting the continuance of their said contract for the full period of at least one year, they were at considerable trouble and expense in the care of such teams and wagons as they had purchased and kept on hand through the winter, to enable them to resume promptly on the 15th day of March, 1852, the execution of their said contract; and on the said 15th of March, or thereabouts, they reported themselves to Captain G. F. Wood, assistant quartermaster of the United States army at Preston, the successor of said Captain Montgomery, as ready to resume the transportation required of them by their contract, when they were verbally informed that their contract was at an end and abrogated by the United States, without alleged fault on the part of your petitioners.

About the time of the abrogation of their said contract by the United States, another contract was entered into by the government of the United States with one T. G. Wright, of Red River county, Texas, for the transportation of army stores, &c., from Wright's Landing, on Red river, to Preston, instead of employing the teams of the petitioners in this service, to their very great loss and injury.

They allege that they had faithfully and promptly performed all the service required of them by their contract during the hauling season of 1851, and they allege that in consequence of the sudden and unexpected abrogation of their contract, which they had been led to believe would last not only the one year, but for several years, they have sustained great loss and damage. They further represent that they have only received from the United States, on account of said contract, the gross amount of \$28,950, which would not have sufficed

even to feed the number of oxen employed in the service through the winter.

No question arises in relation to the authority of the quartermaster, Montgomery, to make the contract, nor as to the liability of the government for the fulfilment of the contract so made. The claim on the part of the United States is, that the contract has not been violated.

I. As to the provision of the contract.

1. It was the positive and express stipulation of the contract that it should continue in force at least one year, and longer, if the officer of the quartermaster's department should so determine. The language of the contract is as follows, (Rec., p. 6 :) "This contract to remain in force for one year from date, or longer, as may be determined by the said Captain A. Montgomery, assistant quartermaster, or by his successor."

2. The said contractors, Black & Butt, agreed (Rec., p. 6,) "to transport from Preston, Texas, to the post about being established on Brazos river, Texas, such army stores and army baggage as the assistant quartermaster at Preston may require them to transport to said post on the Brazos." They were then bound by the contract to take and transport all the goods which might be required of them.

3. They also agreed to do this "without unreasonable delay;" "to provide well-covered wagons with serviceable teams and competent drivers," and this was to be done "*in each year during which the contract shall remain in force.*"

4. The quartermaster, on behalf of the United States, agreed to pay "three dollars for each and every hundred weight" transported, and pro rata to any point west of the Brazos river.

5. Captain Montgomery promised "to cause sufficient military protection to be afforded to the teams employed."

6. The following provision was made in relation to the times of payment:

"*The payments under this contract to be made quarter-yearly, or as soon after the expiration of the last quarter as it may be possible for the said Captain A. Montgomery, assistant quartermaster, or his successor, to procure funds wherewith to make the payments.*"

7. A bond, with surety, for \$52,000, that Black & Butt shall "faithfully perform all the stipulations of a contract for the transportation of army stores and army baggage from," &c., "according to the true intent and meaning thereof."

In pursuance of this contract, from the 12th July to the autumn of 1851, Black & Butt continued to transport public stores, in relation to which no question arises. In the spring of 1852, regarding the contract as still in force, having made their arrangements for the transportation, they stated their readiness to transport supplies, but no such were furnished during the remaining period specified in the contract.

The ground upon which the government refuse to pay is found in some expressions in the contract, viz: "*Such army stores and army baggage as the assistant quartermaster at Preston may require them to transport.*"

The Quartermaster General, under date of July 5, 1856, (Rec., p. 22,) says : * * "Captain Montgomery entered into the contract with Messrs. Black & Butt, upon which they base their claim for damages. On the receipt of the contract at this office, Captain Montgomery was reminded that contracts for transportation should not be made for a year without special instructions from the Quartermaster General's office ; but it was noticed, in regard to this one, that "as the contractors were bound to transport such army stores as were delivered to them only," and "that the public was not bound to furnish any stated quantity, should the public teams sent him prove sufficient for the service, the contract would cease to operate. This shows the construction placed upon the contract here at the time, and it is the same as would be applied to it by the accounting officers of the treasury were it submitted to them."

And in the letter of the 17th of August, 1851, from the deputy quartermaster general in charge to Captain Montgomery, it is stated, (Rec., p. 24 :) "In regard to the contract made with Black & Butt, I have to remark that contracts for transportation should not be made for a year without first having received special instructions from this office ; but as I observe they are only bound to transport," &c.

We contend that this is not the true and just interpretation of this contract, and could not at the time have been so understood by the parties.

From the very nature of the contract, there must necessarily be some uncertainty always as to the quantity of transportation which the government might, at any time, require from one post to another. This might arise from the removal of troops and many other contingencies connected with military service. To these uncertainties this contract, and all other contracts of a similar kind, was necessarily exposed.

But all the provisions of the contract show that it was not the understanding of the parties that it was entirely in the discretion of an officer to render nugatory the contract the very day after it was signed. It was made expressly and positively for one year. This was unconditional and not under the control of either party to change. The *discretion* to the United States officer was, if he should so elect, to continue the contract for a longer time. It was very idle to make any such provision as this if the parties understood that one of them might, at his discretion, refuse to deliver any public stores or baggage under it.

The provision as to quarter-yearly payment shows the fair understanding of the parties as to the continuance of this contract for at least a year, not that it should remain a contract merely nominally, and as a dead letter, but that the service under it was to be performed and the money to be paid for that service throughout the entire year.

By taking the whole contract, together with the accompanying bond, a construction is arrived at which, at the same time that it is in accordance with the sound and well-settled rules of interpretation, is far more creditable to the intelligence and integrity of the government and its officers than that construction which would destroy all

mutuality in the contract, and render it as inconsistent with itself as it would be unjust.

If the government designed to abandon the contract, reasonable notice should have been given to the other party of their intention.

The amount of damages sustained for the violation of the contract is shown by the proof contained in the printed record.

JOHN A. ROCKWELL,
Of Counsel for Petitioner.

IN THE COURT OF CLAIMS.

GEORGE N. BUTT, SURVIVOR, etc., *vs.* THE UNITED STATES.

SOLICITOR'S BRIEF ON FINAL HEARING.

Claim for damages for annulling a contract to transport military stores from Preston to Fort Belknap, on the Brazos, in Texas.

MATERIAL FACTS AS UNDERSTOOD BY THE SOLICITOR.

First. That the United States were about establishing a military post, in 1851, on the Brazos, and not having at the time sufficient teams to transport military stores from Preston to that place, entered into a contract with Black & Butt for transportation. (Montgomery's letter, Record, p. 24.)

Second. That they agreed to transport such stores and army baggage as the assistant quartermaster at Preston might require, at a specific price, which contract was to remain in force for one year or longer, as Captain Montgomery, the acting quartermaster, or his successor, shall determine. There is no provision as to what force of teams they should have, nor that they should have all the transportation between the two points. (Contract, Record, p. 6.)

Third. The contractors received and transported such stores as were at Preston from the date of their contract until the end of the season for transportation on the 1st of December, 1851. (Petition to Congress, Record, p. 5.)

Fourth. That the contract of which the claimants complain as having been made with T. G. Wright, and which interfered and prevented their transporting stores in 1851, was not to convey stores from Preston to Fort Belknap, but to take to Preston.

General Jesup (Record, p. 23) says: "They (the claimants) complain of injustice having been done them by a contract having been made with Travis Wright, in the spring of 1852, for the transportation of army stores from Wright's Landing, on Red river, to Preston; whereas this contract was made in New Orleans January 7, 1852, upwards of two months before the United States could have called on the memorialists in that year to perform any service under their contract. It was a contract for the delivery of stores from a distance at Preston. Captain Montgomery had nothing to do with it, and the quartermaster at Preston had no agency or control over it, further

than to receive the stores on their arrival. The memorialists have no right whatever to complain, as not a pound of the stores passed over any part of the route embraced in their contract." (Record, p. 23.)

Fifth. The stores which were taken from Preston to Fort Belknap were transported by government teams, and when the contractors made their contract they understood that said contract was not to interfere with the use of government teams when they could be used on the route, and the claimant makes no complaint in his petition of the use of such teams by the quartermaster's department.

Captain Montgomery says: "The claimants know well that should my means of transportation be increased, I could not give them employment. For this contingency they should have prepared. They knew in August, 1851, that I had received a large accession of means of transportation, which would in all probability be employed during the succeeding spring in lieu of their teams." (Record, p. 26.)

Again he says: "But there is nothing in the contract giving them the exclusive right to transport any amount of freight whatever, so that I might at any time have employed any other transporter without violation of the contract. The contract was purposely so drawn in order that I might *at any time* dispense with the services of the contractors on finding that the interest of the service would be best subserved by so doing." (Record, p. 25.)

Sixth. The contractors were notified by Captain Montgomery that their teams would not be wanted, so that they did not necessarily keep their teams until 1852 in order to fulfil their contract.

Capt. Montgomery says: "Accordingly, when the number of public teams under my control sufficed to meet all the demands for transportation upon that line, it no longer was necessary to call upon Messrs. Black & Butt, and they were so informed, although there is nothing in the contract stipulating that they were to receive any notice of the requirements of the department beyond such as might be necessary to enable them to assemble their teams at the depot as occasion required. In July, 1851, a large train of public wagons and teams were sent to me from Fort Leavenworth for this service, which so increased my means of transportation, that in the spring of 1852 it was not found necessary to employ the wagons and teams of the contractors, and so, as contemplated by the contract, their service was dispensed with." (Record, p. 25.)

Blackwell says he was wagon-master for the contractors "from the commencement of the hauling season in 1851—say about the first of June—to the time the contract was taken from Messrs. Black & Butt, which affiant thinks was early in the fall of 1851." (Record, p. 9.)

This undoubtedly relates to the notice given by Capt. Montgomery.

Seventh. The contractors did not purchase many wagons and teams, if any, to enable them to perform this contract.

In their petition to Congress, the contractors state "that in order to comply with their contract, they were put to an enormous expense in the purchase of large trains of wagons and teams, to wit: sixty-eight large road wagons and two hundred and seventy-two yoke of oxen; that the wagons and teams cost, upon an average, three hundred and fifty dollars." (Record, p. 5.)

The same statement is substantially made in the petition to this court, except as to the cost. (Record, p. 4.)

This statement is not supported by one word of evidence. Neither Blackwell nor Fitzgerald (Record, p. 9) swear to an actual purchase of any particular number of wagons or teams. The former merely says he "had to purchase a large number of wagons and teams."

Capt. Montgomery says: "When Mr. Butt proposed to contract for this service, to satisfy me of his ability to perform it, he stated to me he had then a number of teams of his own which he employed in hauling from Towson Landing and from Shreveport to Preston, and that he could *hire* other wagons and teams in the vicinity of Preston.

Accordingly, in the settlement I made with him for 24 wagons furnished at Preston depot, and 18 wagons at Washita, in June, 1851, under this contract, the services of which were not immediately required, the cholera having arrested at Fort Smith, Arkansas, the march of the troops for whom transportation at the Brazos had been ordered, Mr. Butt presented receipts from a number of persons of whom he had hired wagons to establish the fact that he had incurred expenses to a certain amount. If I mistake not, there is a statement filed in the office of the Third Auditor showing how many of these wagons and teams were claimed by Messrs. Black & Butt, and how many belonged to others." (Record, p. 25.)

General Jesup says: "Upon examining the papers filed by the memorialists through an agent, it appears that at no time during the year 1851 had they more than *thirty-eight* wagons employed in executing their contract on the route from Preston to Fort Belknap, and that of this thirty-eight, but *nine* were owned by them. The remainder, it would appear, were owned by about twenty different persons whom they employed to enable them to perform the service." (Record, p. 22.)

From this it appears that the contractors really owned but *nine* wagons and teams, and that they hired all the others that were employed in the transportation in question.

Eighth. There is no evidence that the contractors could not find full employment for the teams which they owned after the time that they were notified that the government would not further employ them in the service in question.

Ninth. That the petition in this case is not sworn to by the claimant, or by any other person.

LEGAL PROPOSITIONS.

FIRST. *The evidence shows no contract for the exclusive transportation of stores.*

This is the true construction of the contract. The contractors obligated themselves to transport the stores when requested, but there is no obligation on the part of the government to give them any transportation whatever. Hence, the contract does not sustain the claim.

SECOND. *No damages can be sustained where there has been no violation of contract.*

Neither argument nor authority is necessary to establish this proposition.

The evidence is conclusive that there was no violation of the contract on the part of the government. It performed all it engaged with the contractors, and gave them early notice that they would not be further called upon under the contract.

The formal demand of transportation made in 1852 upon Captain Wood was wholly unnecessary, as notice had been previously given to the contractors. This act looks like an afterthought, and a studied intention to take advantage, on account of Captain Montgomery's absence, and bring the government in for damages for keeping teams through the winter, when they were notified before the winter that they would not be further wanted.

THIRD. *The affidavits of Blackwell and Fitzgerald are not legal evidence, being wholly ex parte; nor are the statements of the claimants evidence.*

This proposition is too elementary to need authority or argument to sustain it.

R. H. GILLET, *Solicitor.*

SEPTEMBER 3, 1858.

IN THE COURT OF CLAIMS.

MAY 31, 1859.

GEORGE N. BUTT, survivor, &c., *vs.* THE UNITED STATES.

SCARBURGH, J., delivered the opinion of the court.

On the 7th day of June, A. D. 1851, Messrs. Black & Butt entered into a contract with the United States, whereby the former, for the consideration therein named, agreed to transport from Preston, Texas, to the post then about to be established on the Brazos river, Texas, (assumed distance one hundred and fifty-eight miles,) such army stores and army baggage as the assistant quartermaster at Preston might require them to transport to that post; to deliver such stores and baggage to the assistant quartermaster at that post in like order and condition as when received from the assistant quartermaster at Preston, without unreasonable delay, unavoidable losses and damages only excepted; to provide good, well-covered wagons and serviceable teams, with competent drivers, for the service; and to transport the stores as above stated when so required to do, except between the first of December and the fifteenth of March in each year the contract should remain in force.

The United States, on their part, agreed to pay Black & Butt three dollars for each and every hundred weight of army stores and bag-

gage which they should transport as above stated, and *pro rata* for the transportation of such stores and baggage to any point or points west of the Brazos river, and to cause sufficient military protection to be afforded to the teams employed as above stated, provided the teams should be made to move in such order as the officers in command of escorts should direct.

The contract was to remain in force for one year from its date, or longer, as might be determined by the assistant quartermaster, through whom the contract on the part of the United States was made, or by his successor, and the payments under it were to be made quarterly, or as soon after the expiration of each quarter as it might be possible for such assistant quartermaster or his successor to procure funds wherewith to make the payments.

The petitioner avers in his petition as follows:

1. That, to enable them to comply promptly with the terms of their contract, Black & Butt purchased and employed sixty-eight large road wagons, drawn by about two hundred and seventy-two yoke of oxen, and hired the necessary number of teamsters and laborers to attend to and manage the same; and that they faithfully transported all the military stores and baggage, and performed all the service required of them by their contract during the year eighteen hundred and fifty-one.

2. That Black & Butt were at considerable expense in the care of such teams and wagons as they had purchased and kept on hand through the winter to enable them to resume promptly on the 15th of March, A. D. 1852, the execution of their contract; and that on the 15th of March, A. D. 1852, or thereabouts, they reported themselves to the assistant quartermaster at Preston as ready to resume the transportation required of them by their contract, when they were verbally informed that their contract was at an end and abrogated by the United States, without alleged fault on their part, and to their great damage.

3. That about the time of the abrogation of the contract between the United States and Black & Butt, the United States entered into a contract with T. G. Wright for the transportation of army stores, &c., from Wright's Landing, on Red river, to Preston, instead of employing the teams of Black & Butt in this service, to their very great loss and injury.

4. That Black & Butt have only received from the United States, on account of their contract with them, the gross amount of \$28,950, which would not have sufficed even to feed the number of oxen employed in the service throughout the winter.

1. As to the first averment:

There is on file in this case an *ex parte affidavit* of Joseph Blackwell, made in October, A. D. 1853, in which he states that "from the commencement of the hauling season in 1851, say about the first of June, to the time the contract was taken from Messrs. Black & Butt, which affiant thinks was early in the fall of 1851, the train of wagons and teams engaged in said transportation consisted of from sixty to seventy wagons."

There is also on file in this case an *ex parte affidavit* of S. W. Fitzgerald, made on the 10th day of November, A. D. 1853, in which he

states "that all the facts set forth in Blackwell's *affidavit* are, as affiant verily believes, true."

These affidavits were sent to this court from the House of Representatives, but it does not appear that the affiants are dead or beyond the reach of the petitioner. The affidavits, therefore, not having been taken according to the rules of this court, are inadmissible in evidence in this case.

The Quartermaster General, in a letter to the chairman of the Committee on Claims, House of Representatives, dated July 5, A. D. 1856, said: "Upon an examination of the papers filed by the memorialists, through an agent, it appears that at no time during the year 1851 had they more than *thirty-eight* wagons employed in executing their contract on the route from Preston to Fort Belknap, and that of these thirty-eight but *nine* were owned by them. The remainder, it would appear, were owned by about twenty different persons, whom they employed to enable them to perform the service; yet the memorialists, by their agent, state that sixty-eight large road wagons were purchased."

It is not pretended by the United States that Black & Butt were required to render any services which they did not render, or by Black & Butt that they were not fully compensated for all the services actually rendered by them.

The petitioners state that they *purchased* and *employed* sixty-eight large road wagons, &c. This statement is not supported by the evidence.

2. As to the second averment:

Joseph Blackwell, in his *affidavit* already noticed, states that the contract was taken from Black & Butt, he thinks, early in the fall of 1851. He also states that, "considering the high prices paid for their teams *in the spring*, and the heavy losses on them when sold *in the fall*," &c. And S. W. Fitzgerald states that all the facts stated by Blackwell are, as he verily believes, true.

Captain A. Montgomery, the assistant quartermaster, through whom, on the part of the United States, the contract with Black & Butt was made, in a letter to the Quartermaster General dated June 16, A. D. 1856, stated: "Accordingly, when the number of public teams under my control sufficed to meet all the demands for transportation upon that line, it no longer was necessary to call upon Messrs. Black & Butt, and they were so informed, although there is nothing in the contract stipulating that they were to receive any notice of the requirements of the department beyond such as might be necessary to enable them to assemble their teams at the depot as occasion required. In July, 1851, a large train of public wagons and teams were sent me from Fort Leavenworth for this service, which so increased my means of transportation that in the spring of 1852 it was not found necessary to employ the wagons and teams of the contractors, and so, as contemplated by the contract, their service was dispensed with."

Joseph Blackwell, in his *affidavit*, states "that, in his opinion, considering the high prices paid for their teams in the spring, and the heavy losses on them when sold in the fall, and the many other inci-

dental expenses incurred by Messrs. Black & Butt to prepare for the completion of their heavy contract, the said Black & Butt suffered damages to the amount of fifteen thousand dollars by the taking of the contract from them."

S. W. Fitzgerald, in his *affidavit*, states "that the damage sustained by said Black & Butt, as estimated by said Blackwell, is, in the opinion of the witness, rather under than over the real and actual damage suffered by them."

George W. F. Wood, assistant quartermaster, certified "that in the spring of 1852 the said Black & Butt, in good faith, supposing said contract to be in full force, stated they were in readiness to transport any supplies for the said post that the quartermaster might deliver to them, but that I was authorized and otherwise instructed and ordered to transport the supplies for the post above mentioned by government teams; and that in consequence of said order the said Black & Butt have asked of me this certificate, in order to show the department the injury they have sustained by not being permitted to transport the stores, as they considered the contract required they should, and that they were in readiness to comply with the contract at the time of the arrival of the stores at Preston in the spring of 1852. *So stated by them.*"

I. If it be assumed that the above-mentioned *affidavits*, letters, and certificates are to be treated as evidence in this case, then they lead to the following conclusions:

1. That in the fall of 1851 Black & Butt received notice from the United States that thereafter they would not be required to transport army stores and baggage from Preston to Fort Belknap.

2. That the teams of Black & Butt were sold in the fall of 1851.

3. That it is not shown that Black & Butt were in readiness to transport army stores and baggage from Preston to Fort Belknap when they so stated to George W. F. Wood; and that though they were then informed that he had been instructed to make such transportation by government teams, yet they had received the same information in the fall of 1851.

4. That it does not appear that Black & Butt purchased any teams or wagons to enable them to execute their contract with the United States, or that they incurred any expense or trouble in the care of teams and wagons purchased by them and kept on hand through the winter of 1851-'52.

Hence it is plain that the second averment is not sustained even by this evidence.

II. But if the above-mentioned *affidavits*, letter, and certificate be inadmissible as evidence, then, there being no other evidence on file in this case relating thereto, the second averment is wholly unsupported.

3. As to the third averment:

The contract with T. G. Wright was for the transportation of army stores from Wright's Landing, on Red river, to Preston; and no part of the route was embraced by the contract with Messrs. Black & Butt. Their claim under this averment is wholly groundless.

4. As to the fourth averment:

It seems to us that the contract between Black & Butt and the United States was not broken by the United States, and that it has not been shown that Black & Butt were entitled to any greater sum of money than that which the petitioner acknowledges that they received. Captain Montgomery remained on duty at Fort Smith until the spring of 1854, and it was not until a short time previous to the 16th day of June, A. D. 1856, that he learned that Black & Butt had preferred this claim, or that they were dissatisfied with the action of the officers of the quartermaster's department under their contract.— (See letter of A. Montgomery to the Quartermaster General, dated June 16, A. D. 1856.)

Our opinion is, that the petitioner is not entitled to relief.

